

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION FOUR**

**R AND R STEEL LLC**

**Employer**

**and**

**Case 04-RC-255318**

**INTERNATIONAL ASSOCIATION OF BRIDGE,  
STRUCTURAL, ORNAMENTAL AND  
REINFORCING IRON WORKERS,  
PHILADELPHIA DISTRICT COUNCIL**

**Petitioner**

**ACTING REGIONAL DIRECTOR'S DECISION AND ORDER**

This case presents two issues: whether the petition should be dismissed because the Employer will soon be ceasing operations in the geographical area of the petitioned-for unit; and whether the petitioned-for craft unit is appropriate. Because the answer to the first issue disposes of the case, I do not need to reach the second issue. The Board will not order an election where it is certain the employer will imminently cease its business operations, but if the cessation is either uncertain or distant in time, then an election will be held. R and R Steel LLC (the Employer) is presently working on a construction project in Bordentown, New Jersey, within the geographical area covered by the petitioned-for unit. Because that job will be completed within the next three months and the Employer has no contracts for new projects within the petitioning union's geographical area, I shall dismiss the petition.

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Philadelphia District Council (the Petitioner or Union), seeks an election in a unit of all full-time and regular part-time reinforcing iron workers employed by the Employer in the following locations: Delaware; New Jersey; Cecil County, Maryland; and in Pennsylvania, the counties of Philadelphia, Bucks, Delaware, Chester, Montgomery, Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.<sup>1</sup> The Employer contends that an election should not be ordered because it will end its operations in Burlington, New Jersey in

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<sup>1</sup> At my direction, the Hearing Officer granted the Petitioner's motion to amend the petition.

the near future.<sup>2</sup> The Petitioner counters that the Employer's plan to cease operations is speculative and, in any case, not so imminent as to warrant the dismissal of the petition. The Petitioner has indicated that it might be willing to proceed to an election in an alternative unit, but not one that is company-wide. On February 11, 2020, a Hearing Officer of the Board held a hearing in this matter.

## **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

The Employer, an Ohio company, installs reinforcing rebar for commercial warehouse construction projects for four or five nationwide construction companies. The Employer has ongoing relationships with all of those companies.<sup>3</sup> When one of them is awarded a bid, it notifies and sends a contract to the Employer, which then accepts the job. There is no competitive bid process; the Employer merely charges the company a price per ton of rebar. The Employer typically has two weeks' notice of a new job, although it may have as much as two months' notice. The Employer does not order or purchase material for a job, it only performs the installation.

As the exclusive rebar installer for Midwest Concrete Constructors (MCC), the Employer is currently finishing rebar installation for a warehouse MCC is building in Bordentown, New Jersey. This is the first project that the Employer has worked on in the Petitioner's geographic area. At the time of the hearing, the Employer had completed 78 percent of its work at the site before weather issues required it to pause. The Employer has employed from six to eleven employees on the project at a time and it anticipates it will need six to eight employees to complete the work,<sup>4</sup> entailing about 30 panels.

The Employer contends that once the weather permits employees to resume operations at the Bordentown project, the job will end within about four business days. The Union concedes that the job is near completion but claims that several contingencies could make the job last a minimum of six weeks and as much as three months. Beyond that job, the Employer's owner Ryan Doan testified that the Employer currently has no signed contracts for future work and no anticipated work scheduled within the Union's petitioned-for geographic area. The Union counters that the Employer has an upcoming job in Delaware. As evidence of that fact, an employee testified that, in late January 2020, Supervisor Julio Avila Ortiz told him and two other employees on the Bordentown project that a big project was coming up in Delaware, but provided no details as to dates, location, or identity of the contracting company. On that subject, Employer witness Ron

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<sup>2</sup> At the hearing, the Employer also contended that the unit should include all 46 of its employees: both those who have worked on the Burlington, New Jersey project, including employees who perform both carpentry and iron work, and six salaried employees who work for the Employer nationwide. Section 102.66(d) of the Board's Rules and Regulations precludes a party from litigating an issue at hearing that it did not raise in its Statement of Position. While the Employer asserted in its Statement of Position that the petitioned-for unit is not appropriate, it failed to specify the job classifications, geographical locations, or other employee groupings that must be added to the proposed unit to make it an appropriate unit. Based on that failure, I instructed the Hearing Officer to preclude the Employer from presenting evidence relating to the appropriateness of the unit, other than the limited question whether a craft unit of iron workers is appropriate, and from challenging the eligibility of any employee.

<sup>3</sup> The Employer declined to identify all but one of these companies.

<sup>4</sup> The Employer asserted that a total of 19 employees have worked at this particular project, although not at the same time.

Estes, who identified himself as a consultant for the Employer, explained that about two to three months before the hearing, a national contractor, whom he declined to identify, discussed two projects with him and asked if the Employer could staff a project in Delaware; Estes replied affirmatively. But, while the Employer received a contract for the project located outside the petitioned-for unit's geographical jurisdiction, it has not received one for Delaware.

Other than its salaried employees, the Employer does not retain a regular workforce to move from job to job. It sends salaried employees, whom it deems "full-time," to various projects around the country and provides housing for them during each project. To satisfy the remaining manpower requirements, it hires local employees for specific projects who are paid hourly and deemed "part-time" employees despite working full work weeks. At the conclusion of a project, those "part-time" employees are likely to be laid off until the Employer has additional work in the area, although the Employer may transfer current employees to other impending projects throughout the country. Of the 19 individuals that the Employer identified as having worked on the Bordentown project, six are "full-time" salaried employees. Among those six, the parties stipulated that four are supervisors: Jesus Lopez, Julio Avila-Ortiz, Roque Alexander Avila-Ortiz, and Edwin Jovany Gomez-Ortiz. Beyond those four, there have been eight iron workers who have regularly worked on the Bordentown project, weather permitting. The other employees worked only for short periods on the Bordentown job.

According to the Employer, there are two classifications of employees on its jobs: iron workers and carpenters/laborers. The iron workers tie rebar, load trucks, and perform other tasks associated with the installation of reinforcing steel and concrete. The carpenters/laborers assemble forms into which concrete is poured, strip those forms, and do laborer work to help maintain the job's schedule. Because the Employer considers carpenters/laborers to be apprentice iron workers, their pay scale is lower than the iron workers'. On the Bordentown project, however, iron workers have performed the carpenters/laborers' task of assembling forms when necessary. Conversely, the Employer has provided opportunities for the less-skilled employees to pack steel and tie bar so that they might eventually move into the iron worker classification. The record establishes that the carpentry/laborer work is minimal and only occurs as courtesy cleanup work for the customer; it is not the work the Employer is contracted to perform. For the Bordentown project, the Employer identified three employees as carpenters/laborers: Ricardo Marcelo Ribero, Byron Noel Oliva and Myron Mendoza Faustina. However, those three individuals are no longer employed by the Employer because the Employer did not need them.

## **II. THE RELEVANT LEGAL AUTHORITY**

### *Imminent Cessation of Business*

The Board will not conduct an election where the employer's closing of its business operations is imminent and certain. *Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992); *Larson Plywood Co.*, 223 NLRB 1161 (1976); *Martin Marietta Aluminum, Inc.*, 214 NLRB 646, 646-647 (1974). However, where the likelihood that the employer's operations will cease is too speculative to warrant withholding from the employees their statutory right to choose or reject union representation, the Board will direct an election. *Hazard Express, Inc.*, 324 NLRB 989, 990

(1997); *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976). The party asserting a cessation of operations bears the burden of proving that cessation of operations is both imminent and certain. *Hughes Aircraft Co.*, *supra* at 83; *Larson Plywood Co.*, 223 NLRB 1161 (1976); *Martin Marietta Aluminum*, *supra* at 647. The Board requires concrete evidence such as announcements of business closure to the public and the employees, termination of employees, or other evidence that the employer has definitively determined the sale, cessation, or fundamental change in the nature of its operations. *Hughes Aircraft Co.*, *supra* at 83; *Martin Marietta Aluminum*, *supra* at 646-647. Factors considered include the period of time between the representation hearing and the expected date of cessation, steps taken by the employer to effectuate the change, and whether the employees have been notified. *Hughes Aircraft*, *supra* at 82-83; *Davey McKee Corp.*, 308 NLRB 839, 840 (1992); *Larson Plywood Co.*, *supra*.

For example, the Board has held that where an employer's operations are scheduled to terminate within three to four months, no useful purpose is served by directing an election. *Davey McKee Corp.*, *supra* at 840; see also *Martin Marietta Aluminum*, *supra* (approximately four-and-a-half months after representation petition filed); *M.B. Kahn Construction Co.*, 210 NLRB 1050 (1974) (three months until significant reduction in force and six months until complete cessation); *General Motors Corp.*, 88 NLRB 119 (1950) (two to four months until cessation). In *Hughes Aircraft Co.*, *supra*, the subcontracting and elimination of unit work within 90 days was found to be definite and imminent based upon evidence of the employer's solicitation of bids, meetings with and execution of agreements with subcontractors, and notification to employees of the timeframe of their anticipated layoff. In *Larson Plywood Co.*, *supra*, the record established that the employer intended to liquidate its entire business within 90 days. In *Douglas Motors Corp.*, 128 NLRB 307 (1960), the evidence showed that the employer intended to subcontract all of its operations within six months. In contrast, in *Norfolk Construction Corp.*, 310 NLRB 527 (1993), the Board ordered an election where the employer was not expected to cease operations in the petitioned-for unit for at least seven months after the Decision and Direction of Election issued.

The Board also considers whether the employer has ongoing projects in the same geographical area. For example, in *Davey McKee Corp.*, *supra*, the Board dismissed a petition after finding no evidence that the employer had any work under bid in the geographical area. In *Fish Engineering & Construction Partners, Ltd.*, 308 NLRB 836 (1992), the Board ordered an election even though the project on which the petitioned-for employees worked was about to end, because the record demonstrated that the employer had other current projects in the same geographic area. The *Fish Engineering* Board distinguished the case from *Davey McKee*, noting that the employer had worked on four projects in the past year, had two current projects at the time of the hearing and had bid on another project for the same company with which it was then under contract. That project was scheduled to commence approximately two months from the end of the employer's current project, in the same geographic area as the sought unit.

### III. ANALYSIS

While the Board will decline to conduct an election based on an employer's intention to cease operations or make changes to the nature of its business, the employer first must demonstrate that those changes are both imminent and certain. In the instant case, at the time of hearing, the

Employer was approaching the conclusion of its sole project in the geographic area. Both the Employer and the Petitioner agree that the Bordentown, New Jersey project is close to completion, although they differ as to the length of the remaining work. At most, the Petitioner asserts that the project may end sometime in late spring, while the Employer asserts that it will conclude in a matter of days. The Employer currently has no signed contracts in the Petitioner's geographical area that extend beyond that time. Petitioner's contention, based on one employee's testimony that he was informed of an upcoming job in Delaware and that the Employer does not turn down work, is at most speculative evidence that the Employer will continue working in the Petitioner's geographic area. Instead, based on the Petitioner's own estimate, the Employer's operations within the Petitioner's jurisdiction should end at the latest within three months from the February 11, 2020 hearing. Thus, the remaining time before the Employer ceases operations is consistent with the above cases finding similar time spans as indicative of an imminent closure.

Moreover, the instant case is distinguishable from *Fish Engineering*, supra. In *Fish Engineering*, the employer had performed significantly more work in the petitioned-for geographic area in the recent past than the Employer in the instant case—four projects in the preceding year – and had two ongoing projects at the time of the hearing as well as a pending bid with a current contractor. In this case, in contrast, there is only speculative evidence regarding future work by the Employer in the petitioned-for geographic area. In light of the above, the Employer has met its burden to establish that the cessation of its operations in the petitioned-for geographic area is imminent and certain. Therefore, I find that no useful purpose would be served in conducting an election at this time. I shall therefore dismiss the petition. *Davey McKee Corp.*, supra, 308 NLRB at 840; *Hughes Aircraft Co.*, supra, 308 NLRB at 83.

To ensure the employees' statutory right to an election, however, if there is new evidence indicating that the Employer is not proceeding to cease operations consistent with evidence it submitted at the hearing, I will entertain a motion by the Petitioner to reinstate the petition. See *Davey McKee Corp.*, supra, 308 NLRB at 840; *Cal-Nevada Lodge*, 235 NLRB 1167 (1978).

## **I. FINDINGS AND CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **II. ORDER**

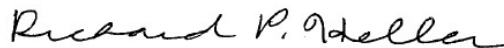
**IT IS HEREBY ORDERED** that the petition be, and it hereby is, dismissed.

## **III. RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **March 31, 2020**.

A request for review must be E-Filed through the Agency's website. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the request for review rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. A request for review must be E-Filed through the Agency's website. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties. A certificate of service must be filed with the Board together with the request for review.

Dated: March 17, 2020



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**RICHARD P. HELLER**

Acting Regional Director, Region Four  
National Labor Relations Board